



CITY OF SYRACUSE
REPORT OF THE
ELECTED CITY AUDITOR

**REPORT ON THE CHAMBER OF COMMERCE
TECHNOLOGY GARDEN UTILITIES SUBSIDY**

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SYRACUSE CITY AUDITOR**

**To the: Honorable Stephanie A. Miner, Mayor
 Members of the Common Council
 City of Syracuse, New York**

The Office of the City Auditor is responsible for reviewing the activities of all the departments of the City in accordance with generally accepted government auditing standards. Those standards require that we assess risk in determining the subject matter for audit.

We conducted our examination in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States and *Standards for the Professional Practice of Internal Auditing*, as promulgated by the Institute of Internal Auditors. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions regarding the organization, program, activity or function under examination. An audit also includes assessments of applicable internal control and compliance with requirements of law and regulations when necessary to satisfy audit objectives. The management of the City of Syracuse, New York, is responsible for establishing, maintaining and complying with the internal control structure and for compliance with applicable laws, regulations and contracts.

Performance audits entail an objective and systemic examination of evidence to provide an independent assessment of the performance and management of a program against objective criteria as well as assessments that provide a prospective focus or that synthesize information on best practices or cross cutting issues. **Performance audits provide information to improve program operations and facilitate decision making by parties with responsibility to oversee or initiate corrective action and improve public accountability.**

Performance audits encompass a wide variety of objectives including objectives related to assessing program effectiveness and results; economy and efficiency of internal controls (programmatic, financial and compliance), compliance with legal or other requirements, and objectives related to providing prospective analyses, or improvement to managerial decision.

Performance audits may entail a broad or narrow scope of work and apply a variety of methodologies, involve various levels of analysis, research, or evaluation; generally provide findings, conclusions and recommendations and result in the issuance of a report.

This report is intended solely for the information of the Mayor and the Common Council of the City of Syracuse, New York. However, this report is a matter of public record and its distribution is not limited.

Introduction:

In 2002 the City of Syracuse was requested by the Greater Syracuse Chamber of Commerce (“Chamber”) to enter into a lease for the property at 235 Harrison Street, which was at that time and continues to be owned by the City. The proposal submitted to the City provided for a nominal consideration arrangement, to permit the Chamber to renovate and operate the premises as an incubator center for new and developing businesses and technologies.

The lease agreement would permit the site, which had been under utilized for an extended period of time, to be renovated with significant funding through several grants and referenced the contribution from Onondaga County for this purpose in the amount of \$1,000,000.00 (One million dollars). The City’s contribution to the project was providing the property “as is” for the stated purposes; the City would receive, during the term of the lease agreement, a nominal \$1.00 per year lease payment. Upon completion of the renovations of the property, the Chamber would manage a newly rehabilitated 33,000 square foot office space for technology start-ups to develop. The lease was approved by the City and executed in March, 2004.

In February, 2010, the administration of the City of Syracuse initiated a request for legislation to be placed on the agenda of the Common Council which would authorize a settlement for the amount owed to the City by the Greater Syracuse Chamber of Commerce Technology Garden facility with respect to unbilled charges for utilities from the opening of the Technology Garden through May, 2009. The ordinance placed before the councilors referred to the amount specified by the legislation as payment “in full settlement of the amount due to the City from the Chamber for unbilled utility charges in the agreed upon amount of \$216,547.00”.

The legislation established legal provisions for granting the City a leasehold mortgage, without interest, for an “amount equal to the obligation recorded on the Tech Garden’s books”, or \$216,547.00 as noted above. The request specified that any transfer of the Chamber’s interest to the Technology Garden or the successor in interest to the program and properties of the Chamber would not trigger the payment, and that the City would agree to subordinate its leasehold interest to any subsequent financing entered into to improve or expand the Technology Garden facility.

Members of the Common Council were informed that of the various options reviewed by the City, the preferable option was to formalize the leasehold mortgage, as described above. They were advised that without resolution of the outstanding liability, efforts underway allowing the Chamber to combine with the Metropolitan Development Association and create a centralized entity would be hampered if not completely derailed.

Believing the proposed combination would provide an advantageous opportunity for the creation of a partnership that would unify two major business based organizations into a single entity that would unify and centralize the business community's efforts to assist economic development and be better positioned to generate greater levels of innovation, the Common Council proceeded to approve the settlement with a 7 to 2 vote at the March 1, 2010, regular meeting. With this settlement the combination of two independent agencies proceeded and a new entity, CenterState Corporation for Economic Opportunity was created by filing with the New York Secretary of State to manage the projects, programs and properties of the MDA and the Chamber and their affiliates

Following the action taken by the Common Council, questions and concerns continued to be raised about the appropriateness of what now took on the appearance of a governmental subsidy with public funds being used to provide the subsidy. Local media organizations and labor groups questioned the policies and practices employed by the City of Syracuse that allowed this situation to develop and wondered aloud about the City's "bailing out" the Chamber of Commerce. The Greater Syracuse Labor Council called on the Common Council to rescind its vote, noting that in these difficult economic times, "forgiving a debt to an organization who can afford to pay for it is egregious".

The Office of the City Auditor was requested by one of the Common Councilors who had voted against the settlement to investigate the circumstances surrounding the payment of utility bills by the City in an effort to avoid a reoccurrence of such an event in the future. In response to the request the Office of the City Auditor opened a Performance Audit of the circumstances and actions related to the Technology Garden utility billing settlement.

Audit Objectives:

The objectives originally determined at the outset of the performance audit for the Technology Garden utility subsidy are as follows:

1. Determine the circumstances around the original lease between the City and the Greater Syracuse Chamber of Commerce for the property at 235 Harrison Street, and referred to as the Technology Garden, and the circumstances that led to the City paying the utility bills on behalf of the Chamber for an extended time frame. Determine the accuracy of the amount of the settlement in relation to the most accurate estimate for the actual utility costs paid by the City for 235 Harrison Street.
2. Determine what the practices, policies and procedures were that existed during the time that the City was paying for the electric utility for the Technology Garden that resulted in failing to either get reimbursed or to get the bills changed so that the Chamber of Commerce, or the Chamber's Technology Garden, was billed directly.

3. Determine the practicality and implication of granting a leasehold mortgage for \$216,547 as a replacement for the liability on the Chamber's balance sheet to account for the electric bill liability.
4. If possible, determine the legality of the actions taken to date and review the possibility of options for future consideration or action.
5. Examine the potential for similar errors existing elsewhere in City operations, where the City may be inadvertently providing subsidies in error or by oversight; determine where those situations might exist and how improved internal controls could be put in place to protect the City from reoccurrences of such failures.
6. If possible, and when appropriate, make recommendations to the administration on enhancements to the City's policies and procedures consistent with safe guarding the tax payers' interests while still assisting ventures that are in the public's interest and serve a public purpose.

The objectives of the audit were later expanded at the request of a Common Councilor to determine if a more accurate actual cost could be determined for the subsidy provided to the Chamber of Commerce for electric utility bills related to the Technology Garden property for the full period when a single meter was used for both the City garage facility and the Technology Garden facility.

Audit Scope:

Purpose

The purpose of this audit was to get an overview of the circumstances that started with the execution of the 2004 lease agreement between the Greater Syracuse Chamber of Commerce and the City of Syracuse for the property known as the Technology Garden, and leading to the settlement of the outstanding liability belonging to the Chamber for unpaid utility bills in March, 2010. Another intention of the audit was to attempt to ascertain if any similar situation was occurring currently without the knowledge of the administration or its managers.

The audit scope was later expanded to determine the closest estimate of the actual subsidy provided to the Chamber as suggestions surfaced that the amount of the settlement - which provided for the creation of a leasehold mortgage for the amount of the obligation recorded on the Technology Garden's balance sheet to dispose of the liability - was less than the total of the actual subsidy payments made by the City on the Chamber's behalf.

Additionally, the audit was undertaken with the intention of reviewing what policies and procedures were in place during the period under review, and what policies and procedures should be employed in the future to protect the City's taxpayers from facing a reoccurrence of this event.

Methodology

The methodology of this audit was to meet with appropriate personnel of the City and appropriate non-City individuals to get a thorough understanding of what happened during the time frame in question; to obtain necessary documentation, pertinent letters of clarification and any other correspondence available to independently verify the events.

The Office of the City Auditor interviewed a number of individuals involved in the history of the Technology Garden renovations and the related electrical billing procedures, including several of the administration's upper-level administrators who were included in the information gathering process. Among the individuals interviewed were the following City of Syracuse employees: the Director of Administration, the Budget Director, the Commissioner of Assessment, a member of the Corporation Counsel's Office, the former Commissioner of the Department of Public Works, and the Account Clerk II employed at Public Works during the time frame of the audit and assigned the task of processing the many payments running through the office for utilities.

Concurrently, the Office of the City Auditor also interviewed Darlene Kerr, former President of the Greater Syracuse Chamber of Commerce, who was involved in the majority portion of the discussions between the Chamber and the City relative to the Chamber's efforts to resolve the Technology Garden utility issues. In addition to the former leader of the Chamber, the interview session included Francis Caliva, Jr. Senior Vice President and Chief Operating Officer of CenterState CEO. Mr. Caliva had previously served as Director of Talent Initiatives for the Metropolitan Development Association of Syracuse and Central New York, Inc.

While conducting the above-noted interviews, the Office of the City Auditor sought to collect additional information and perspectives from several other current and former employees of the City, former Mayor Driscoll, and from former employees of the Chamber of Commerce and others by attempting to meet with individuals.

Scope Limitation

The City administration cooperated with the Office of the City Auditor in making staff available and assisting in the reconstruction of many of the circumstances surrounding this matter.

However, there were circumstances which limited the Office of the City Auditor during the information-gathering phase of the audit.

The equivalent of scope impairment was encountered due to restrictions in getting cooperation/responses resulting from legal issues related to the separation from employment for at least one individual that was contacted as part of the audit.

Additionally, while not a scope limitation per se, the Office of the City Auditor determined that some lines of inquiry were limited by the number of individuals who had left employment with the City of Syracuse and/or the Chamber of Commerce during the lengthy time frame covered by the audit, and were therefore not available for confirmation of facts, or for adding insights to several aspects of the circumstances being examined.

The Office of the City Auditor made attempts to obtain confirmations of information presented from singular sources through other sources whenever possible, but these efforts were not always successful. In detailing the background information gathered for this review, note will be made of details that are included but are unverified or inconsistent with information provided by other interviewees.

Background Information:

Outline of Events Related to Technology Garden Subsidy:

- 1) In 2002 the City of Syracuse was requested by the Greater Syracuse Chamber of Commerce Economic Development Corporation (“Technology Garden”), a controlled affiliate of the Greater Syracuse Chamber of Commerce, Inc. to enter into a lease for the property at 235 Harrison Street, which was at that time owned by the City of Syracuse. The proposal was submitted to the City to permit the Chamber to renovate and operate the premises as an incubator center for new and developing businesses and technologies, and provider of comprehensive tech business start-up services.
- 2) The property at 235 Harrison Street was the site of a ground level, under-utilized commercial space; the portion of the MONY Parking Garage that was situated above the ground level space/site had collapsed and the Southwest corner of the AXA Plaza presented a location of potential for the Chamber’s vision for a community based incubator center. The center would be developed with grant funding from several sources and with the support of Onondaga County and the City of Syracuse.

The Chamber planned on constructing the proposed Technology Garden facility with grants from the United States Department of Commerce Economic Development Administration (\$750,000), Empire State Development Corporation (\$500,000), Technology Research and Development Authority of the State of Florida (\$500,000), and with a cash contribution from Onondaga County, provided to the project through the Onondaga County Industrial Development Agency.

On December 16, 2002, the Common Council approved the lease agreement between the City and the Chamber for the plaza building for a fifteen (15) year period for \$1.00 per year (Ordinance #628-2002). The lease was contingent upon the Chamber securing funding from federal, state and local

sources within 90 days of approval by the Mayor. The lease contained a provision that in the event that the site ceases to operate as the proposed Incubator Center, the property with the improvements will revert back to the City.

On September 22, 2003, an ordinance (#469-2003) was approved amending the original legislation, providing for the lease term to be changed from fifteen (15) years to seventeen (17) years with an option to extend the term for another ten (10) years, and to permit the lease agreement to be subordinated to any mortgage financing obtained for the Incubator Center, upon such terms and conditions as shall be determined by the Corporation Counsel to be in the best interest of the City.

On December 2, 2003, the lease agreement was executed by David P. Cordeau on behalf of the Chamber and by the Commissioner of Assessment, City of Syracuse, John Gamage, on December 3, 2003, having been structured subject to the approval of the Corporation Counsel of the City as to form and content. To this end, the lease states in Section I, "Premises" that ***"Any water, sewer and utility connections shall be the responsibility of Tenant."*** Also specified is the City's disclaimer on any operational costs that would be associated with the property for the terms of the lease. In Section 13 (g) – "Tenant's Covenants" the Tenant's responsibilities are ***"To pay all of the charges or fees attributable to Tenant's use of the Premises, if any, including, but not limited to, charges for real property taxes and special assessments, Downtown Special Assessments, utilities, water and sewer charges; it being the intention of the parties to this agreement that the City shall have no responsibility for any operation, or the payment of, any of the costs or expenses of the Premises, its renovation or its operation during the terms of this Agreement"***.

- 3) The Technology Garden was completed in December, 2004, and it opened its doors as a home to early stage technology companies, the site for counseling early stage entrepreneurs, and hosting a number of networking events consistent with the core mission of the enterprise. Mr. Nasir Ali was chosen to function as the president of the Technology Garden. Based on information supplied by Darlene Kerr (President of the Chamber, from early 2006 through the beginning of 2010) after several months of operation, Technology Garden management began to question the source of the electric service and inquired as to who was responsible for the payment of electric billing, which was still unseen at that time. The City investigated the situation, and after a lengthy period determined that the Technology Garden was being provided electricity through the master meter located in the City's parking garage, located under the plaza. One consolidated bill for electric use for the garage and the Technology Garden was being paid by the City.

- 4) Around June of 2006, and shortly after having started her period of leadership with the Chamber, Darlene Kerr, who succeeded Mr. Cordeau as President, was informed that there was still no billing being received for the electric utility. The City was contacted about this issue and according to Ms. Kerr, discussions were begun to evaluate the possibility of finding alternative energy sources and obtaining grant funds to implement the technologies for the Technology Garden in the future.
- 5) The Office of the City Auditor was informed by the former Chamber President that the auditors employed by the Chamber, in preparing the 2006 Fiscal Year Audit, discussed the situation of the utilities liability with Chamber leadership. It was suggested that an accrual for estimated utilities should be established since the issue had not been resolved with the City within the fiscal period. It was also communicated by the auditors that since the City verbally could not give an estimate of the expense, or if the past expense would be due, a liability existed.
- 6) In 2007, the City engaged a consultant, Energy Automation, to determine a methodology for disaggregating past bills and estimating the Chamber's portion and to look into alternative energy prospects and potential funding to pursue alternatives. In May 2007, an initial estimate was presented by Energy Automation for the disaggregated past bills. The first estimate attached a value of \$179,831 for the Technology Garden through April, 2007. This would mean that for this 2 ½ year period an average annual utility cost would have been approximately \$71,932.
- 7) Other discussions continued around this time which included the Chamber, the City's Economic Development Director and the Mayor's Office. They were related to resolving the size of the estimated debt and the viability of using solar panels on the roof of the Technology Garden or wind energy to reduce the cost of electricity for the Incubator Center in the future.
- 8) Again for Fiscal Year 2007, Parente Beard LLC, the Chamber's auditor, reported during the audit process that the issue of utility expenses had not been resolved, according to information supplied to the Office of the City Auditor. The Chamber's auditors recommended that this issue should be resolved as soon as possible in the current year so that this expense could be properly budgeted for in the future and any amounts due in arrears be taken care of.
- 9) Through the first half of 2008 the situation continued unchanged even with the concerns mentioned by the Chamber's auditor during the audit process for the two prior fiscal years. The Office of the City Auditor received information from a number of individuals who consistently noted that during the period from April, 2007 until at least mid-2008 the predominant

focus stayed fixed on identifying and agreeing on the amount of the Chamber's utility usage.

Simply put, the Chamber and the City could not agree on the amount even with the City's report from Energy Automation in hand.

The second focus that was most-mentioned during interviews related to efforts in securing grants, and the assessment of alternative energy sources and lastly, occasional mention was made relative to efforts on the City's part in getting a separate meter installed.

Information from City representatives, including the former Mayor, noted that the delay in billing the Chamber was based on the Chamber's reluctance to accept the City's estimates and their challenging the numbers generated by Energy Automation and the methodology being used to disaggregate the billing.

Reports of the Chamber bringing in their own consultant to develop a methodology were repeated frequently, with several City employees providing the name of one specific local energy analysis service firm. However, this alleged independent evaluation by a firm was not confirmed by Chamber representatives, although they acknowledged that the City's numbers were seen as being unrealistic and as being much too high. To emphasize and support the logic of the Chamber's position on the value of the utilities used by the Technology Garden, the former president of the Chamber stated that the electricity used by the Incubator Center from April, 2009 to March, 2010, was billed directly to the Chamber through the dedicated meter for the Technology Garden and totaled around \$70,000.00 for the first twelve months of disaggregated billing.

The former president of the Chamber suggested that the cost of prior years should logically be less given the likelihood of lower energy costs for those periods as well as lower usage due to it being a start up situation at that time.

- 10) A second estimate prepared by Energy Automation for the Technology Garden's use of electricity for a period of four years and four months was approximately \$362,750, an amount that continued to be the center of disagreement; the first estimate from Energy Automation went through April, 2007 while the second ran up to the end of February 2009.

- 11) The Office of the City Auditor was provided with a copy of a written communication from Darlene Kerr to Mayor Driscoll dated September 22, 2008. In the communication, it states “As you are aware, the City of Syracuse has been billed and paid, all electrical utilities expense for the Syracuse Technology Garden since its opening in December 2004. The purpose of this memo is to request that as part of the City’s commitment to knowledge-based job creation and economic development the practice of the City covering those expenses continues for the term of the Technology Garden lease”.
- 12) In July 2009, according to the former Chamber president, she met with the former Mayor to discuss other options for resolving the issue. She provided the Mayor with information outlining the Technology Garden’s economic impact, and according to a memo written by the former president of the Chamber to Mayor Miner on January 5, 2010, she felt an understanding was reached that the City would not pursue the debt and the Technology Garden would remove any obligation to the City from its books.
- 13) The former Mayor confirmed that the issue of the disputed bill became a point of conversation between the Chamber of Commerce and himself “in the late summer of 2009. The amount of the bill was of great concern to the Chamber and as such asked the City several times to review and verify the outstanding amount”. The former Mayor, in communications with the Office of the City Auditor, stressed that the inability to agree on an amount due remained a sticking point in the negotiations between the Chamber and the City. Around the same time, discussions were progressing in regard to the proposed merger of the Chamber of Commerce and the Metropolitan Development Agency (MDA).

The estimate of the Technology Garden’s usage prepared by Energy Automation remained unchanged at the level of approximately \$362,750.

- 14) In August 2009, Green and Seifter, Attorneys, PLLC started a legal feasibility study on behalf of the Chamber and the MDA relative to a potential combination of the two organizations. The attorneys brought the utility question to the attention of the Strategic Partnership Committee in the mid to late summer of 2009. According to information provided by Robert Simpson, President of CenterState CEO, “the Chamber described an unwritten agreement with Mayor Driscoll that had already settled the outstanding liability. The law firm recommended that the agreement be reduced to writing and advised the committee that the approval of the Common Council would be required”. The president of CenterState CEO framed the information he supplied to the Office of the City Auditor by noting that it is his understanding that the Chamber had not pursued any alternatives for dealing with the debt because its management was of the

mind that a solution had already been achieved; the issue was reopened as a consequence of the combination discussions.

- 15) In early 2010, the head of the Incubator Center announced that he was stepping down as president of the Center. Also, with the new administration taking office in January 2010, the memo noted above (Number 12) was prepared by the former president of the Chamber to give the new Mayor background detail that led up to the present situation. The former president of the Chamber reported that the new Mayor recognized, as Mayor Driscoll had done before, that the Technology Garden was an excellent tool for economic development and stated that she too wanted to help. The former president of the Chamber also stated that Mayor Miner asked the Chamber to confer with their attorneys, hired by the Chamber to represent them in the feasibility study, to see what solutions they could propose to address the problem and keep the merger possibility on the table. According to the president of CenterState CEO, “As negotiations progressed, the new administration made it clear that a simple waiver of the debt was not acceptable”.
- 16) By the time that such efforts were underway, the magnitude of the debt was starting to have a dollar amount associated with it, based on numbers agreed to by the Chamber. An amount of \$216,547 was the amount identified by the Chamber’s auditor, Parente Beard, as the amount that should be carried on the balance sheet to account for the electric bill liability. According to CenterState CEO, in 2006 Parente Beard estimated the outstanding liability at \$70,000; in 2007, \$50,000 additional was accrued and in 2008 another \$96,547, for a total of \$216,547.
- 17) According to CenterState CEO’s president “Adding over \$200,000 to the Chamber’s already significant liabilities, lack of working capital, declining revenues and dwindling reserves would have required a complete re-working of the merger pro forma and might likely have caused the MDA to withdraw from the merger discussions entirely”.
- 18) The law firm hired and paid for by the Chamber sketched out parameters that might be acceptable to all parties involved – the new Mayor, the Council, the Chamber and the MDA. The Chamber proposed a settlement as follows:
 - a) The Chamber would grant the City a leasehold mortgage, without interest, with recourse solely to the Chamber’s interest in the real property and improvements known as the Technology Garden facility. (The form of the security is a leasehold mortgage because the Chamber’s interest in the Technology Garden is a leasehold interest defined in the city lease.)

b) The amount of the leasehold mortgage would be equal to the sum of \$216,547 (the amount of the obligation recorded on the Technology Garden's books) and the mortgage would only be paid at such time as the Chamber disposes of its interest in the facility.

c) The City would agree to subordinate its leasehold mortgage to any subsequent financing entered into to improve or expand the Technology Garden facility. NOTE: The executed lease for the facility contains a provision that in the event that the site ceases to operate as the proposed Incubator Center, the property with the improvements will revert back to the City.

19) The proposal as structured by the Chamber's law firm was negotiated on behalf of the Chamber by Bond, Schoeneck & King PLLC in direct negotiations with the City. Bond, Schoeneck & King PLLC, which was retained by the Chamber to consummate the combination, confirmed that the mortgage document submitted to the City was reviewed and found acceptable. The Office of the Corporation Counsel did not attempt to negotiate the balance due at that time.

The administration accepted the amount the Chamber stated was owed as submitted. This amount is identical to what was accepted by Green and Seifert, the law firm for the Chamber's feasibility study, based on numbers discussed with the Chamber's auditors. The Mayor then recommended the same to the Common Council for approval.

20) Councilors were briefed by the administration. The Common Council approved the settlement with seven of the nine voting members voting in favor of the proposal at the March 1, 2010 meeting.

21) On May 21, 2010, it was reported that the Greater Syracuse Labor Council, a union organization representing 40,000 workers, was calling on the Common Council to rescind its vote to convert the debt to a leasehold mortgage obligation. President of the Labor Council, Dr. Dennis Nave, questioned how the City could in good conscience forgive a debt to an organization who can afford to pay for it in such tough economic times. The City's Director of Administration, Ken Mokrzycki, said that Mayor Miner stood by the resolution of the matter, noting that without it, the merger of the MDA and the Chamber of Commerce could not have occurred.

22) The Greater Syracuse Labor Council protested in front of City Hall on Monday, June 7, 2010, to show their continued frustration over the action taken by the City's administration and Common Council.

Conclusions:

After reviewing the timeline and the numerous materials provided to the Office of the City Auditor from a variety of sources, the first question we looked to answer was “How were things allowed to get so out of control for the City for such an extended period without someone stepping in and addressing the central issues”?

Sadly, this is not the first time that the problem of a questionable situation continuing unaddressed for a lengthy period of time has been picked up in an audit undertaken by the Office of the City Auditor. Another example of this type of situation where an unfavorable condition was allowed to remain in place for an unacceptable time frame was included in the audit of the City’s parking garages, completed in the summer of 2006. In that audit, a finding was reported noting that a number of management contracts for City owned downtown parking garages had expired on December 31, 1999, and extended on a month-to-month basis for over six years and that the delays in rebidding contracts were having an adverse impact on the City. This became an issue of contention over the obligation of the City to pay a living wage rate retroactively, with a court ruling forcing the City to make payments of a significant amount.

In October, 2006, the City filled the position of Parking Facilities Supervisor, recognizing the need to have someone with primary responsibility for the City’s parking facilities. At that time, the Office of the City Auditor was informed that DPW was optimistic that a number of the problems pointed out during the audit would be addressed with the hiring of an individual to fill the newly created position.

Unfortunately, the events observed with the breakdown in properly billing the Technology Garden appear to be similar to what happened with the garages in that there was no one individual keeping an eye on things as the primary manager working solely to preserve the best interest of the City. ***It is strongly recommended that the City create a position of City Facilities Supervisor that places in one location the managerial responsibility for all City facilities, their maintenance, utilities, insurance coverage, collection of revenues (when appropriate), etc. This could be combined under the duties of the previously created position of Parking Facilities Manager, if feasible, to avoid increased staffing issues.***

With a single person being held accountable for City held properties, assuming the proper authority to correct problems is given to this position (or the individual is given full access to the Mayor and the administration’s main decision makers to insure action), speedier resolutions of problems should be anticipated and expected. Under the existing organizational structure, as was learned during the interviews conducted for this audit, changes in personnel created complications and added to the problem of determining exactly where various elements of the problem entered into the picture, and who should have taken ownership over problems at various times through the five year period. The changing of individuals in some key positions (President of the Chamber, Mayor of Syracuse, and President of the Technology Garden being among the most obvious)

certainly further complicated trying to understand who had done what and with what understanding of events that preceded their involvement with the Technology Garden. If the City had one position creating continuity in the midst of personnel churn, the rotation of participants would be less of a complicating factor.

Setting aside the need for a dedicated position for facilities management for the moment, it is essential in understanding how things were able to deviate from the formal arrangements contained in the lease agreement to the situation that transpired to note the element of motive. Repeatedly during our examination of the events leading up to the approval of a leasehold mortgage settlement we heard how a number of the individuals wanted to assist the Chamber since it was doing good things in fostering start up businesses that would serve as stimuli to the local economy. This is certainly understandable, but ultimately it is a bad justification for what was allowed to occur. ***There are many fine local organizations doing good deeds in the community, but this does not entitle them to receiving financial subsidizing of their enterprises from public moneys intended to support governmental operations.***

The Chamber of Commerce was the first party to start the chain of events that followed by failing to honor the obligations they committed to abide by in the lease agreement they signed. The lease required the Tenant to make the utility connection. This was not implied – it was clearly stated in Section I of the lease, and then immediately forgotten or ignored. Had the Technology Garden taken the initiative it should have taken in December 2004, when the Technology Garden opened, most if not all of the criticisms of a sweetheart deal struck by the City could have been avoided.

Another element that contributed to the central issue of the Technology Garden utilities going uncorrected for over five years relates to the assertion that the City had its hands tied in negotiating a settlement which required the “consent of all parties”. With a lease in place that specifically described the tenant’s responsibilities – including the responsibility for utility *connections and all of the charges or fees attributable to Tenant’s use of the premises*, the **situation should never been allowed to develop that limited the City’s ability to recoup moneys that were due and payable**. The Chamber of Commerce erred in not setting the moneys aside that were owed to the City (and which appeared in their own financial representations) and the City erred in leaving itself in the position of having to justify its consultant’s calculations of the amount due.

Obviously, the extent of the difference in the amount outstanding would have been significantly reduced had prompt action been the order of the day. Even so, the first estimate provided by Energy Automation which averaged approximately \$71,900 per year for electric usage does not seem to be so far apart from the figure of \$70,000 in actual billing reported by the former president of the Chamber for April 2009 through March 2010. The minor amount of variance between these two amounts suggests again that the true sticking point might not have been the amount being sought as much as the efforts of the Chamber to have the City subsidize the utility expense in total.

One thing that might have brought the issue to light earlier is if the City had showed a receivable on its financial records. There was no receivable on the City's books for this item, which there should have been. Accounting standards for governmental entities require that receivables and payables be reported in the compilation of annual financial statements.

Whether the amount matched the Chamber's claimed liability or matched the amount due per the City's energy consultant's estimate, the existence of something being reported as due the City would have created a situation where the external auditors would have seen an entry and questioned it. This could have led to an earlier realization of a problem and a quicker response to it.

The current administration wasted little time in dealing with this unresolved problem. However, having recognized and emphasized the value of taking quick action, it also needs to be stated that the central decisions made in responding to the situation have not allowed the City to represent its case in a favorable light.

However, at this juncture, it might be best to step back for a moment and take a look at the overview that framed the decision making processes taking place in that time frame.

In 2009, the Chamber and the MDA had started an evaluation process that was setting the stage for a possible combination of the two existing organizations. The MDA had a history for not incurring very much if any debt and was open to the benefits of a unified economic development voice in the central New York business community as long as the combination with the Chamber resulted in incurring manageable liabilities. Early in the feasibility process the liabilities that were identified, the reduced level of working capital, along with declining revenues were a concern, but not seen as an obstacle to moving ahead.

A plan was formulated that would create a new entity while each of the existing organizations would continue to exist as a separate and legal entity. This was predicated on the recognition that there were non-transferable grants and liabilities that needed to be retained out of necessity. Each organization exists as a 501(c) (6) tax exempt, nonprofit corporation or association. (According to the IRS Publication 557 there is a listing of various 501 (c) organizational types. 501 (d)(6) qualified organizations include business leagues, real estate boards, home builders associations, the national association of truck stop operators, the National Football League, and local chambers of commerce. The category is expected to be devoted to the improvement of business conditions of one or more lines of business. It is not engaged in any regular business typically carried on by for-profits.) With the successful filing with the New York Secretary of State, the new entity would also become a 501(c) (6) corporation, each entity having a different public purpose. As part of the combination, the Chamber and the MDA would have identical memberships (over 2200 businesses in the central New York region).

This is in fact what occurred. On May 4, 2010, CenterState Corporation for Economic Opportunity was created. The only members of CenterState are the MDA and the Chamber of Commerce. The MDA, the Chamber, and CenterState each have identical Boards of Directors and have common management but are separate and distinct corporate entities.

When the Strategic Partnership Committee was apprised of the additional liability for the electrical billing, it is reported that it immediately became an issue of concern, and as noted elsewhere in this report, an issue that needed to be addressed in order for the combination of organizations to move forward. Could this debt have been covered by the new corporation had the Council not approved the settlement? Did the Chamber have the financial ability to pay off the debt with a multi-year payment schedule? In discussing the merger with the Chamber representative, it was noted that the merger was not done out of financial necessity, and that the Chamber was doing fine. Others have questioned the accuracy of this assessment, but this is outside the scope of this report and not a topic that will be speculated on herein.

Nonetheless, the financial condition of the Chamber does appear to factor into how the City proceeded. It has been widely asserted that the success of the Chamber and the MDA to resolve this last-minute issue was brought forward as a critical requirement to the Common Council and became a pressure point central to the success of months of planning. Re-working the pro-forma for the combining of the two organizations likely would cause the MDA to withdraw entirely.

The conclusion reached by this office after numerous interview sessions was that the City should have included a more comprehensive, open and public review of the situation that was brought forward to the Common Council. A public forum would have gone a long way to establishing the need to either subsidize the Chamber for the debt or to determine that while the Chamber provides a service to the community, it was not proper for the City to ignore the debt that was due and payable. Failing to have a full discourse on the legislation has left the way the issue was handled lacking a clear answer and open to multiple interpretations.

In addition, it is suggested that in the future, in those rare instances where City financial support is being requested, both the administration, in particular the Commissioner of Finance and/or the Director of Management and Budget, and the Common Council should request relevant financial documents from those seeking funding and incorporate this data into the public debate to determine the correct course of action in assessing requests.

Another misstep identified by the Office of the City Auditor in the latter stage of the history of the Technology Garden subsidy was related to the decision of the administration to accept the numbers presented by the Chamber as the reimbursable amount due the City. The City's decision to accept the amount put forward by **the Chamber's** paid advisors over the amount calculated by Energy Automation, **the City's** consultants was an egregious error. Several times it was mentioned by individuals interviewed that the City's calculation of the usage remained firm in spite of the Chamber's assertion that the City was overstating the billing amount.

There could never have been any doubt that the starting point for the Chamber, when it was asked by the Mayor to confer with their attorneys hired to help them with the merger, would be to come back to the table using the lesser amount it was showing on the balance sheet for the liability. **This should not have been the agreed upon ending number when the City had information to the contrary stating that the true value of the electrical usage for four plus years exceeded \$360,000.** If the City was intent on granting a leasehold mortgage as the mechanism to address the debt, it should have at least insisted on it being reflective of the full value of the expense covered by the City on behalf of the Chamber.

The Chamber makes a compelling case for some adjustment of the debt based on the Technology Garden having provided space to the City when it needed to house nearly 100 employees who were displaced from the City Commons for five months while lead remediation efforts were underway. This could have become an element in negotiations, had there been any true give and take. Instead, the Chamber's offer was accepted out of hand.

Findings and Recommendations:

Findings:

Finding 1: The Chamber Of Commerce Erred By Not Abiding By Its Agreement With The City

The Greater Syracuse Chamber of Commerce initiated the discussions with the City of Syracuse and Onondaga County in 2002. The Chamber sought to partner with local government in developing a technology incubator center. It played a central role in obtaining grants from various sources and securing funding from Onondaga County. It lobbied the City to obtain the property at 235 Harrison Street and, fully aware of the specific obligations include in the City/Chamber lease agreement, entered into a formal arrangement.

Almost immediately after the opening of the Technology Garden, the Chamber went into the mode of being financial dependent entity versus being a responsible partner. By not taking control of the utility situation at the beginning, the Chamber allowed a situation to develop that lingered for years and grew in magnitude. The Chamber should have honored the agreement by **taking control of the utility connections and charges**, as required by the lease agreement; instead, it went into a mode of ignoring the contract it signed and lobbying for continued public assistance.

In the future, the City needs to make it clear to organizations that are looking to be prospective partners with it that the City expects its partners to be clear about their responsibilities and the requirements placed on them by signed agreements.

Finding 2: The City Administration Should Have Acted Sooner To Eliminate The Technology Garden's Reliance On A Single Electric Meter In The Absence Of Action By The Chamber

Just as the Chamber exhibited a nonchalance about the issue of the source of the electric utility for the Technology Garden, the City likewise took no immediate interest in correcting the problem, once the situation was identified, and did not press the Chamber to live up to the agreement that was executed between the two entities. Whether the City's inaction was well-meaning or not, it contributed significantly to the problem by letting the magnitude of the debt grow over time, and allowing the Chamber to point out that part of the resulting situation was created by the City.

Recommendation: When the City discovers non-compliance and inconsistencies in agreements it has executed, it needs to pursue remedies with a sense of urgency that will provide for timely corrections.

Finding 3: The City Should Create The Position Of City Facilities Manager To Ensure That Situations Similar To The Technology Garden Do Not Reoccur

It cannot be emphasized enough the importance of creating a position exclusively dedicated to supervising City of Syracuse facilities, including monitoring leases, utilities, insurances, revenues and coordinating properties' maintenance. With a single person being accountable, problems will be addressed in a timely manner and decision making will be centralized instead of being distributed in an overlapping or disorganized fashion.

Recommendation: It is strongly recommended that the City create a position of City Facilities Supervisor – or place these duties under the Parking Facilities Manager - that places in one location the managerial responsibility for all City facilities; maintenance, utilities, insurance coverage, and collection of revenues, etc.

Finding 4: The City Should Not Have Accepted The Proposal Put Forward By The Chamber As The Final Negotiated Settlement Without Fuller Public Disclosure

City administrations have asserted that it was key to having a settlement that the Chamber agree to the terms of the settlement and that the Chamber's reluctance to agree with the disaggregate estimates prepared by Energy Automation, the City's paid consultant. This appears to be at the heart of the decision made by the new Mayor when requesting the Chamber to confer with their attorneys to see what solutions they could propose.

In spite of these assertions, the City Auditor concludes that the City should not have accepted the one and only proposal submitted by the Chamber; the first proposed remedy to settling the debt should have been used as a starting point for negotiations, not the final settlement that was then forwarded to the Common Councilors where it would be interpreted that what was on their desks represented a settlement that contained compromises on the part of both the City and the Chamber. A fuller public presentation on what was being requested, why it would serve the City's interests and the potential repercussions of rejecting the proposed settlement were elements of the dialogue that should have accompanied the process and simply did not. Such dialogue in public would have created an environment that would have fostered a rational decision being made that let the public know the reasons for a specific final determination.

Finding 5: The City Should Not Have Used The Chamber's Lawyers As The Developers Of The Proposal For The Settlement

The City erred in recommending that the attorneys representing the Chamber (attorneys that were compensated by the Chamber, their clients) be the authors of a settlement that was going to be utilized as the settlement base. Obviously, they would only recognize the remaining liability in the context of the amount suggested by the Chamber's auditors – an amount that has no actual basis or is a number that can be qualified. The City needed to have someone other than the attorneys retained by the Chamber develop a starting point for negotiations, if the Chamber continued to reject the disaggregated amounts previously brought forward by the City.

Finding 6: The City Should Have Not Subsidized The Settlement Using General Fund Moneys

As noted in the Conclusion Section of this audit, there were repeated references made to the efforts of City officials to assist the Chamber address the cost of electric utility usage based on the recognition that the Technology Garden was fostering business development in the community. Whether these good intentions carried over to letting the public think that the full amount of the obligation was merely \$216,000 instead of the \$362,700 plus amount reported by Energy Automation cannot clearly be determined. Whatever the answer, the City should not have considered subsidizing the Chamber with General Fund moneys. If, after a fuller review as to the benefit to the City to facilitate the merger by some sort of financial assistance, moneys needed to be found in a fund other than the General Fund

Recommendation: If the City determines in the future that it should for one reason or another assist with similar economic incentives, it needs to be clear and accurate as to the amount of the assistance, and the proper funding source (i.e. S.I.D.A. loans or SEDCO grants) need to be used for transaction.

Finding 7: The City Should Have Shown A Receivable On The Ledger To Accurately Show That The City Was Due A Reimbursement For Payments Made On Behalf Of The Technology Garden

Given the extensive level of discussion within the various City departments involved with the utility billing for the Technology Garden, it appears that the need for placing a receivable on the City's accounting records was overlooked. Had this been done, questions about the arrangements between the City and the Chamber could have been key to a better resolution of the matter. In the case of the Technology Garden receivable, it would appear that the Department of Public Works erred in not including a receivable since it is obvious to the City Auditor after conducting interviews that a number of DPW employees were well aware of this being an unresolved and outstanding issue going on year after year for several years.

Recommendation: If the City experiences either revenue impairment or a problem in obtaining reimbursement for payments made by the City on behalf of a non-city entity, a discussion should be undertaken with the appropriate administrators and the external auditors as to how such a situation should be reported on the City's books.

Recommendations:

Recommendation 1: In The Future The City Should Negotiate For The Repayment Of Any City Moneys Due Instead Of Accepting Non-Monetary Options Or Alternatives

It is the recommendation of the City Auditor that in the future, if the City finds itself in a similar situation in having to decide between structuring a long-term payment plan to get moneys due to the City back versus other options which would not repay the City, which in this case describes the leasehold mortgage structure, the City should always protect the pocket book of city taxpayers and look to return moneys back to the general fund or related subsidiary city fund that is due the reimbursement.

Recommendation 2: Contrary To Demands Of The Syracuse Labor Council, The City Must Honor The Agreements It Authorizes

Free speech and the right to express an opinion is what make this country great. The City Auditor lauds the Syracuse Labor Council for being concerned about city policy during their protest on June 7, 2010. Many citizens and groups are involved and the active participation of groups and individuals is increasingly important for government to operate in the best interests of the community it represents.

However, the position taken by the Labor Council on June 7, 2010, at City Hall is flawed. At the time of that protest action, the City was urged to rescind the agreement that had been previously approved by the Common Council establishing an alternative method for settling the debt with the City, and to seek the moneys owed by the Chamber of Commerce.

When the City enters into an agreement it has to honor its commitment, whether the commitment is/is not popular, or creates/does not create the best outcome for the City taxpayers.

The unions themselves admit that they would be the first to cry foul and to say they were betrayed if the City were to renege on a City/union agreement that was not fully honored by the City; regardless if any other person or entity thought that agreement to be unfair.

No agreement made by the City should ever be reneged. All contracts – be they related to developers, unions, services, settlements of a law suit - or an agreement such as this with the former Chamber of Commerce – entered into by the City must be honored.

Honoring a contract provides assurance to third parties doing business with the city that terms will remain constant.

Whether any contract ultimately is viewed as fair or not, once agreed upon it must be honored. In this instance, the Mayor and the Council entered into an agreement that clearly stated in its language that the matter was resolved and the liability was expunged via an instrument created (the leasehold mortgage).

Once the City enters into an agreement it is bound by that agreement and it is for this reason that the City must negotiate strongly on its behalf versus relying on attorneys paid by the opposing side to come to terms.

Recommendation 3: The Common Council Must Perform Due Diligence

The members of the Common Council need to perform their due diligence to the best of their abilities before voting on matters that affect the taxpayers. They also provide the best forum for full and open discussions on such matters and for better communication to the public on how decisions being approved are meeting the needs of the community, particularly the City taxpayer.

On the many matters that come before the council, answers seem to be taken at face value from representatives of the administration; and assumed to be correct by the Councilors. The council is an independent body separate from the administration. While it is true that the body does question the representatives of the administration, it would behoove the council to obtain independent verification – separate from administration representatives - on significant matters.

The City Auditor recognizes that the councilors are considered to hold part time positions with regular meetings being scheduled on average twice monthly. As such, their exposure to daily issues and to intricate details of matters before the City's legislative body is limited in scope. However, the Common Council has a robust staff. The majority of the staff members act in a secretarial fashion while there is but one research/administrative position. The council may wish to review assignment of duties to create more legislative research positions to provide it with a robust independent analysis of information to compare to that provided by the administration.

The council must take a certain level of responsibility for issues presented to that body. Requiring staff to independently verify facts on many matters coming before the council is increasingly important for the City to function effectively. The role of the Common Council is to actively participate in the process and, when the matter before the legislative body calls for it, challenge the administration prior to providing its authorization. This would provide transparency and a healthy discourse.

This would serve the council and the tax payer better, versus blindly accepting verbal assertions from individuals who do not represent the council but represent the Administration.

Philip J. LaTessa
City Auditor
November 29, 2010